RECENT DECISIONS

ADMIRALTY—MARITIME TORT—STATE WRONGFUL DEATH ACT.—A statute of Maine, Rev. Stat. (1916) c. 92 §§ 9, 10, created a right of recovery for a death resulting from an "act, neglect or default . . . such as would, if death had not ensued, have entitled the party injured to maintain an action . . ." The libelant brings a libel *in personam* for the death due to negligence of his intestate while employed on a steamship in Portland Harbor. *Held,* the state statute creates a maritime right enforceable in the federal admiralty court. *Earles* v. *Howard* (D. C. D. Me. 1920) 268 Fed. 94.

This case throws into sharp relief the distinction brought about by the decision in *Knickerbocker Ice Co.* v. *Stewart* (1920) 40 Sup. Ct. 438; see (1920) 20 COLUMBIA LAW REV. 685. The representative of a maritime worker killed by negligence may recover in admiralty under a State Wrongful Death Act. *Sherlock* v. *Alling, Admin.* (1876) 93 U. S. 99. But under the *Stewart* case, the representative of a maritime worker killed by accidental means may not recover in admiralty under a State Workmen's Compensation Law. The Supreme Court reached this result originally upon the procedural ground that a Compensation Law was not a "common law remedy, where the common law is competent to give it," such as to be saved to suitors in admiralty by the Judicial Code §§ 24, 256. *Southern Pacific Co.* v. *Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 524; see (1917) 17 COLUMBIA LAW REV. 703. An attempt to overcome this decision by legislation, (1917) 40 Stat. 395, U. S. Comp. Stat. (1919) §§ 991, 1233, was declared unconstitutional in the *Stewart* case, chiefly because it destroyed the uniformity of maritime law contemplated by the grant of power in the Constitution. The established line of cases which the present decision follows is treated on the other hand, as falling within the "saving clause," although the Wrongful Death Acts were not known to the common law. *The City of Norwalk* (D. C. 1893) 55 Fed. 98; see *The Hamilton* (1907) 207 U. S. 398, 28 Sup. Ct. 133. But the artificiality of the distinction is measured by the inequity of the result.

BILLS AND NOTES—CONDITIONAL DELIVERY—PAROL EVIDENCE.—The plaintiff, payee of a note, sues the defendant indorser. The note was given in renewal of a note executed by the X Co. and signed by the defendant and other stockholders as irregular indorsers. The defendant contended, *inter alia*: (1) that the note was delivered to the plaintiff but was not to become binding unless and until the plaintiff procured W to indorse it; (2) that the note was not to become binding unless and until the plaintiff himself indorsed it. *Held,* for the plaintiff on a directed verdict. *Tross* v. *Bills' Ex'x* (Ky. 1920) 224 S. W. 660.

The decision of the court rests upon the sole ground that the answer discloses no defense for the reason that evidence to support it is inadmissible under the parol evidence rule. But extrinsic evidence may always be introduced in an action between the immediate parties to show that no obligation ever arose, *Niblock* v. *Sprague* (1911) 200 N. Y. 390, 93 N. E. 1105; or that the obligation has been discharged, N. I. L. §§ 119, 120. Such evidence is not excluded since the parol evidence rule applies only where there is a valid subsisting obligation. While it is true that the second defense annexes a rather absurd condition to the inception of an obligation, for the plaintiff could never become obligated to himself, such a condition, like any other condition precedent, in form is effective and must be complied with. *Cf. De Sonora* v. *Casualty Co.* (1904) 124 Iowa 576, 100 N. W. 532.